



DEPARTMENT OF COMMERCE

International Trade Administration

[A-421-815]

Certain Preserved Mushrooms from the Netherlands: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain preserved mushrooms (preserved mushrooms) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Benjamin A. Smith or Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2181 or (202) 482-0012, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this

investigation on April 27, 2022.¹ On August 16, 2022, Commerce postponed the preliminary determination of this investigation until October 27, 2022.²

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The product covered by this investigation is preserved mushrooms from the Netherlands. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁴ the *Initiation Notice*, Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ No interested party commented on the scope of this investigation as it appeared in the *Initiation Notice*. Therefore, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the full description of the scope in Appendix I to this notice.

Methodology

¹ *See Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain: Initiation of Less-Than-Fair-Value Investigations*, 87 FR 24941 (April 27, 2022) (*Initiation Notice*).

² *See Certain Preserved Mushrooms from the Netherlands, Poland, and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations*, 87 FR 50291 (August 16, 2022).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from the Netherlands," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁵ *See Initiation Notice*, 87 FR at 24942.

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences for Okechamp B.V. (Okechamp). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Commerce has preliminarily assigned a rate based entirely on facts available, pursuant to section 776 of the Act, to Okechamp, and calculated a zero percent weighted-average dumping margin for Prochamp B.V. (Prochamp). Therefore, there are no rates calculated in this investigation not zero, *de minimis*, or based entirely on facts otherwise available upon which to calculate the preliminary rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these

circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margin(s) from the petition.⁶

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/Exporter	Estimated Weighted-Average Dumping Margin (percent)
Okechamp B.V.	146.59 ⁷
Prochamp B.V.	0.00 ⁸
All Others	132.97 ⁹

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific

⁶ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; see also *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

⁷ See Preliminary Decision Memorandum at section V, “Use of Facts Available with Adverse Inferences.” See also *Initiation Notice*, 87 FR at 24944.

⁸ See Memorandum, “Preliminary Determination Analysis Memorandum for Prochamp B.V.,” dated concurrently with this memorandum.

⁹ See “All Others Rate” section, *supra*; see also *Initiation Notice*, 87 FR at 24944 and accompanying Antidumping Duty Investigation Initiation Checklist, “Certain Preserved Mushrooms from the Netherlands,” dated April 20, 2022. The margins alleged in the Petition were 120.88, 131.45, and 146.59 percent.

estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise except as explained below; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Because the estimated weighted-average dumping margin is zero for Prochamp, entries of shipments of subject merchandise from Prochamp will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by Prochamp. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by this respondent in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties any calculations performed in connection with this preliminary determination within five days of its public announcement or, if

there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs and other written materials may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁰

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹¹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

¹⁰ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

¹¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the *Federal Register* if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 6, 2022, pursuant to 19 CFR 351.210(e), Okechamp and Prochamp requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹² On October 10, 2022, Giorgio Foods, Inc. (the petitioner) requested that, pursuant to 19 CFR 351.210(e), Commerce postpone the final determination in the event of a negative preliminary determination.¹³ In accordance with sections 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, pursuant to section 735(a)(2) of the Act, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

¹² See Okechamp's and Prochamp's Letter, "Request to Extend the Final Determination," dated October 6, 2022.

¹³ See Petitioner's Letter, "Petitioner's Request for Postponement of Final Determination," dated October 10, 2022.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of preserved mushrooms from the Netherlands are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: October 27, 2022.

Lisa W. Wang,
Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus *Agaricus*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are “marinated,” “acidified,” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Affiliation
- V. Application of Facts Available and Use of Adverse Inference
- VI. Discussion of the Methodology
- VII. Currency Conversion
- VIII. Recommendation

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